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FISCAL IMPACT STATEMENT

LS 6704

BILL NUMBER: HB 1190

NOTE PREPARED: Feb 23, 2006

BILL AMENDED: Feb 23, 2006

SUBJECT: Farm Winery Sales to Retailers.

FIRST AUTHOR: Rep. Stutzman

FIRST SPONSOR: Sen. Weatherwax

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill redefines "farm winery". The bill allows a farm winery to sell the winery's wine to consumers by the bottle at a farmers' market that is operated on a not-for-profit basis. It also allows a farm winery to offer wine tastings and sell the winery's wine at three locations apart from the winery. The bill increases to 30 days (from nine days) the amount of time in a calendar year during which a farm winery may participate in a trade show or exposition. It provides that a wine manufacturer located inside or outside Indiana that wants to sell wine directly to a consumer must obtain a direct wine seller's permit. The bill also establishes an annual direct wine seller's permit fee of \$100. This bill makes it a Class C misdemeanor for violating the direct wine shipping statutes and increases the penalty to a Class A misdemeanor or Class D felony if the person has prior unrelated offenses. This bill establishes a wine wholesaler permit fee for a wholesaler who sells less than 12,000 gallons of wine annually. This bill also allows a person to bring 18 liters of wine into Indiana for personal use. The bill prohibits the holder of a farm winery distiller's permit from selling brandy at wholesale and specifies that the holder may only sell brandy at retail on the permitted premises. It repeals affidavit requirement for a holder of a farm winery permit.

Effective Date: (Amended) Upon passage; July 1, 2006.

Explanation of State Expenditures: (Revised) It is estimated that the increase in enforcement costs for the Alcohol and Tobacco Commission (ATC) could be covered through the use of existing staff and resources.

(Revised) *Penalty Provision:* A direct wine shipper may not ship more than 9,000 liters of wine into Indiana per year. A consumer may not receive more than 216 liters of wine per calendar year through direct shipment. A person who knowingly or intentionally violates these provisions two times in a ten-year period commits a

Class C misdemeanor. A person who knowingly or intentionally violates these provisions three times in a ten-year period commits a Class A misdemeanor. A person who knowingly or intentionally violates these provisions more than three times in a ten-year period commits a Class D Felony.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: (Revised) *Farm Winery Sales:* This bill allows a farm winery to sell the winery's wine to consumers by the bottle at a farmers' market that is operated on a not-for-profit basis. This bill also allows a farm winery to offer wine tastings and sell the winery's wine at three locations apart from the winery. The bill also increases to 30 days (from 9 days) the amount of time in a calendar year during which a farm winery may participate in a trade show or exposition.

(Revised) *Direct Wine Shipper's Permit:* This bill provides that a wine seller may only sell wine directly to a consumer if they hold a direct wine shipper's permit. The ATC may only issue this permit to a wine seller who:

- (1) is domiciled or has their principal place of business in the United States;
- (2) is engaged in the manufacture of wine;
- (3) acts within the authority of the permit requirements of Indiana or the state of issuance;
- (4) qualifies with the Secretary of State to do business in Indiana and consents to personal jurisdiction in Indiana;
- (5) files a surety bond with the ATC;
- (6) does not hold a wholesale permit and is not owned by a wholesaler permittee;
- (7) produces less than 500,000 gallons per year, sold within Indiana;
- (8) has not distributed wine through a wine wholesaler in Indiana within the 30 days immediately preceding the application;
- (9) is not in any way affiliated with a manufacturer; and
- (10) completes the application required by the ATC.

The annual fee for this permit is \$100. This provision will result in an indeterminable increase in fee revenues. The exact amount will ultimately depend upon the number of wine sellers who obtain this permit.

(Revised) *Penalty Provisions:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class C misdemeanor is \$500. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class D felony is \$10,000. However, any additional revenue would likely be small.

Farm Winery Permit Changes: The bill also changes the requirements for obtaining a farm winery permit. The bill removes a requirement from the definition of farm winery that required the winery to produce wine from grapes, other fruits, or honey produced in the state. The bill also removes from current law the requirement that a farm winery produce an affidavit that a certain fruit, grape, or honey is not obtainable in Indiana and therefore must be bought out of state. The bill also removes the one-year Indiana residency requirement for issuance of a farm winery permit, and allows any individual or business (admitted to do business in Indiana) to apply for a permit.

Currently there are 36 wineries that hold farm winery permits in Indiana. The change in the permit requirements above could lead to a greater number of applicants for farm winery permits from out-of-state wineries. The fee for this permit is \$500. More wineries in the state could also impact both individual and corporate income taxes depending on the volume of sales and the income recognized.

Alcoholic Beverage Excise Taxes & Sales Tax: If these provisions impact sales of wine, both Sales Tax and Wine Excise Tax collections could be impacted. The \$0.47 per gallon wine excise tax is distributed to the following funds: state General Fund (\$0.20), the Post War Construction Fund (\$0.16), the ATC Enforcement and Administration Fund (\$0.04), the Addiction Services Fund (\$0.02), and the Wine Grape Market Development Fund (\$0.05). The state retains 50% of the General Fund distribution of beer and wine excise tax revenue. The remainder is distributed to cities and towns based on population.

Sales Tax revenue is deposited in the: Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

Explanation of Local Expenditures: (Revised) *Penalty Provision:* A Class C misdemeanor is punishable by up to 60 days in jail. A Class A misdemeanor is punishable by up to one year in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: (Revised) If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Alcohol and Tobacco Commission. Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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